

**SANITIZED DECISION – 06-348 RMFE – BY GEORGE V. PIPER ALJ – SUBMITTED
for DECISION on SEPTEMBER 29, 2006 – ISSUED on OCTOBER 6, 2006**

SYNOPSIS

MOTOR FUEL EXCISE TAX – UNTIMELY FILED REFUND CLAIM MUST BE DENIED – Although W. Va. Code § 11-14C-9(c)(15) provides a refundable exemption from excise tax on motor fuel purchased in quantities of twenty-five (25) gallons or more for use in internal combustion engines not operated upon the highways of this state, Petitioner's failure to timely file its petition for refund on or before April 30, 2006 for purchases of motor fuel during the immediately preceding calendar quarter pursuant to W. Va. Code § 11-14C-31(c)(3) mandates that the refund claim be denied.

FINAL DECISION

On May 2, 2006, the Petitioner filed a claim for refund of \$ of motor fuel excise tax, for the period of January 1, 2006 through March 31, 2006. By letter dated May 12, 2006, the Excise Tax Unit Manager of the Internal Auditing Division ("the Division") of the West Virginia State Tax Commissioner's Office ("the Commissioner" or the "Respondent"), denied the entire refund claim. The reason stated for the denial was that such tax refunds for fuel purchased January 1, 2006 through March 31, 2006 must be filed with a postmark date of no later than April 30, 2006, and, therefore, Petitioner's claim for refund filed on May 2, 2006, was untimely filed, in alleged violation of W. Va. Code § 11-14C-31(c)(3) [2003].

Thereafter, by mail postmarked May 30, 2006, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for refund. *See* W. Va. Code § 11-10A-8(2) [2002].

In its petition for refund the Petitioner requested a decision based upon the documents previously supplied in the case. This tribunal granted that request.

FINDINGS OF FACT

1. On March 31, 2006, Petitioner prepared for filing two (2) “Motor Fuel Excise Tax Off-Highway Refund Applications” for a combined motor fuel excise tax refund of \$ for fuel which it had purchased during the period January 1, 2006 through March 31, 2006.

2. Petitioner’s refund application was totally denied by Respondent on May 12, 2006, as being untimely filed because the same had not been filed until May 2, 2006, two (2) days after the April 30, 2006 deadline.

DISCUSSION

The only issue is whether Petitioner has shown that it is entitled to the motor fuel excise tax refund previously denied by the Commissioner.

W. Va. Code § 11-14C-9(c)(15) does provide a refundable exemption from excise tax on fuel purchased in quantities of twenty-five (25) gallons or more for use as a motor fuel in internal combustion engines not operated upon the highways of this state. However, W. Va. Code § 11-14C-31(c)(3) requires that such an application for refund must be filed no later than the thirtieth of April for purchases of motor fuel made during the immediately preceding calendar quarter, which in this case would run from January 1, 2006 through March 31, 2006.

W. Va. Code § 11-14C-31(d) provides that untimely refund requests are not to be construed as moral obligations of the State.

In this case Petitioner stated in its petition for reassessment that the reason the refund filing was delayed until May 2, 2006 was because the person responsible for filing the refund was on maternity leave and was unaware of the new reporting process. However, the statutes do not allow for any exceptions to the tax-refund claim-filing deadline.

It should be noted that Respondent has prevailed in this case, on well-settled law, without appearing at a hearing in person.

CONCLUSIONS OF LAW

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon a petitioner-taxpayer, to show that the petitioner-taxpayer is entitled to the refund. *See* W. Va. Code § 11-10A-10(e) [2002] and W. Va. Code St. R. § 121-1-63.1 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to its contention that it is entitled to the refund because the statute, Code § 11-14C-31(c)(3), explicitly requires that such refund must have been filed no later than April 30, 2006, while the record clearly shows that Petitioner's claim for refund was not filed until May 2, 2006. *See* W. Va. Code St. R. § 121-1-69.2 (Apr. 20, 2003). Ignorance of the law is no excuse. The statute itself constitutes constructive notice of the law to everyone.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the Petitioner's petition for refund of \$, of motor fuel excise tax, for the period of January 1, 2006 through March 31, 2006, must be and is hereby **DENIED**.